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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

~~No. 245.~~ 83

GEORGE L. EAMES, PLAINTIFF IN ERROR,

vs.

SARAH J. SAVAGE.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE.

FILED OCTOBER 7, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 348.

GEORGE L. EAMES, PLAINTIFF IN ERROR,

vs.

SARAH J. SAVAGE.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 18, 1887.

1 STATE OF MAINE, } ss:
Somerset, }

At the supreme judicial court begun and held at Skowhegan, within and for the county of Somerset, on the third Tuesday of March (being the seventeenth day of said month), A. D. 1885.

Present: Honorable Artemas Libbey, justice supreme judicial court.

GEORGE L. EAMES *v.* SARAH J. SAVAGE.

This action was commenced on the thirtieth day of November, A. D. 1883, and the writ and process are as follows, viz:

Writ.

STATE OF MAINE, } ss:
Somerset, }

To the sheriffs of our several counties or either of their deputies, or of any constable of the town of ——, in the county of ——, Greeting:

We command you to attach the goods & estate of Sarah J. Savage, of Concord, in the county of Somerset and State of Maine, to the value of one thousand dollars, & for want thereof to take the body of the said Sarah J. Savage, summon the said defendant (if she may be found in your precinct), and her safely keep, so that you have her to appear before our justices of our supreme judicial court, next to be holden at Skowhegan, within & for the county of Somerset, on the third Tuesday of December, A. D. 1883, then & there in our said court to answer to the grievous complaint of George L. Eames, of Embden, in the county of Somerset and State of Maine, who complaineth & saith that whereas the said Sarah J. Savage, by the consideration of our justices of our supreme judicial court, holden
2 at Skowhegan, within and for the said county of Somerset, & State of Maine, on the third Tuesday of December, in the year of our Lord one thousand eight hundred & eighty-two, did recover judgment against the town named Emden or Embden, in the said county of Somerset, in its capacity as a corporation, created & existing by the laws of this State, by the name of "The Inhabitants of the Town of Embden, in Somerset county," for the sum of three hundred & twenty-four dollars & twenty-three cents damage and twelve dollars & seventy-five cents costs of suit, as appears by the record thereof now remaining in the said court, which judgment was in no way rendered or recovered against the said George L. Eames, nor was he in any way summoned or notified to appear in the action in which said judgment was rendered, nor was any process of law in any way served upon him therein, & he has had no day in court to defend against the same or to show that his property is not liable to the payment of the claim of the said Sarah J. Savage upon which said judgment was rendered, or of said judgment; and the said George L. Eames further avers that neither himself or his property is or ever was in any way liable to or for the payment of

the said claim or the said judgment; yet the said defendant, not considering the premises, but contriving & intending to aggrieve, injure, and defraud the said George L. Eames, and to deprive him unjustly & without due process of law of his property hereinafter described & set forth, did thereafterwards, to wit, on the sixth day of August, in the year of our Lord one thousand eight hundred & eighty-three,
3 at said Skowhegan, sue out from the clerk's office of the said court a writ of execution, directed to the sheriffs of our several counties or either of their deputies, reciting said judgment, but describing Sarah J. Savage by the name of Sarah G. Savage, & commanding them, the said sheriffs, or their deputies aforesaid, that of the goods and chattels of the inhabitants of the said town of Embden and real estate situated therein, whether owned by said town or not, within their precincts they should cause to be paid and satisfied unto the said Sarah J. Savage, so described in said execution by the name of Sarah G. Savage as aforesaid, at the value thereof in money, the aforesaid sums so recovered by said judgments being three hundred & thirty-six dollars & ninety-eight cents in the whole, with interest from the thirtieth day of December, in the year of our Lord one thousand eight hundred & eighty-two, being the time of rendition of said judgment, together with thirty cents more for said writ of execution and one former writ, and thereof to satisfy themselves for their own fees. And the said Sarah J. Savage, further contriving & intending to injure, aggrieve, & defraud the said George L. Eames and deprive him unjustly of his said property without due process of law, did thereafterwards, to wit, on the nineteenth day of October, in the year of our Lord one thousand eight hundred and eighty-three, at said Embden, to wit, at said Skowhegan, cause the said writ of execution, so sued out as aforesaid, to be placed in the hands of one N. F. Clapp, then & ever since deputy sheriff
4 of said county of Somerset, under one Samuel A. Bickford, the sheriff of said county of Somerset, and cause the said deputy sheriff then & there to sign upon the said writ of execution the goods & chattels following, to wit: One pair of steers or oxen, five years old, of the value of one hundred and twenty-five dollars; one pair of steers, four years old, of the value of one hundred & ten dollars; one pair of steers, three years old, of the value of one hundred dollars; one pair of steers, two years old, of the value of seventy-five dollars, & one pair of steers, two years old, of the value of sixty-five dollars, and all of great value, to wit, of the value of four hundred and seventy-five dollars, the same being then & there the goods and chattels and property of the said George L. Eames; and, thereafterwards, to wit, on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred & eighty-three, at said Embden, to wit, at said Skowhegan, said Sarah J. Savage, further contriving & intending to aggrieve, injure, & defraud the said George L. Eames & deprive him unjustly of his said property without due process of law, did cause the said goods and chattels so seized as aforesaid to be sold by said deputy sheriff & the proceeds thereof to be applied to the expense of said seizure and sale and the payment to the said Sarah J. Savage of her said

judgment and interest & costs as aforesaid as directed by said writ of execution, and thereby the said George L. Eames has been wholly deprived of his property aforesaid above described without due
5 process of law and to the manifest grievance, damage, & prejudice of him, the said George L. Eames, & against the law of the land & countrary to the provisions of the constitution of the State of Maine & of the United States, and this the said George L. Eames is ready to verify.

Wherefore he prays that it may be adjudged that said writ of execution was sued out, & said seizure & sale were made wrongfully and unjustly, & with intent to aggrieve, injure, & defraud him, the said George L. Eames, & without any due process of law, and against the law of the land & constitution of the said State & of the United States, and that said execution & all said proceedings thereon may be set aside & annulled, & that said George L. Eames may recover herein the damages he has suffered hereby & by all said proceedings, to wit, the wrongful suing out & execution, seizure, & sale aforesaid of his said goods & chattels without due process of law & against the law of the land and the constitution of the said State and of the United States as aforesaid. The said George L. Eames, as he says, is damaged in the sum of one thousand dollars, as shall then & there be made to appear, with other due damages. And have you there this writ with your doings therein.

Witness John A. Peters, Esquire, at Skowhegan, the thirtieth day of November, in the year of our Lord one thousand eight hundred & eighty-three.

L. H. WEBB, *Clerk.*

A true copy of writ.
Attest:

L. H. WEBB,
Clerk of the Supreme Judicial Court.

6 *Return of Officer.*

The officer serving said writ made the following return of service upon the back thereof, to wit:

SOMERSET, *ss:*

DECEMBER 1ST, A. D. 1883—Ten o'clock in the forenoon.

By virtue of the within writ I have attached all the right, title, & interest which the within-named defendant, Sarah J. Savage, has in & unto all & any real estate in said county of Somerset, and within five days after the above attachment I filed in the office of register of deeds for the county of Somerset a true & attested copy of so much of my return on this writ as relates to this attachment, together with the names of the parties in this writ, the value of the defendant's property, which I am commanded to attach thereon, the date of said writ, and the court to which the same is returnable.

B. G. ALLBER,
Deputy Sheriff.

And on the 4th day of December, A. D. 1883, I left at the place of last and usual abode of the within-named Sarah J. Savage a summons for *his* appearance at court.

B. G. ALLBER,
Deputy Sheriff.

Fees:

Service	75
20 m. travel	1 20
Copy of return	25
P'd reg.	10
Postage & travel	15
	$2 45

A true copy of officer's return.
Attest: L. H. WEBB, *Clerk.*

This action was commenced and entered at the December term of this court, in this county, A. D. 1883, and the said Sarah J. Savage duly appeared and answered thereto, by her attorneys, A. H. Ware, Esq., & Lindsey & Harrington, Esquires; & said action was thence continued to the March term of said court, A. D. 1884, when the following pleadings were filed, to wit:

Pleadings.

Supreme Judicial Court. March Term, A. D. 1884.

7 GEORGE L. EAMES *v.* SARAH J. SAVAGE.

And now the said defendant comes & defends the wrong & injury, when, &c., and says she is not guilty in manner and form as the said George L. Eames has alleged, and of this she puts herself upon the country.

By STEWART & WARE, *Her Att'ys.*

And the complainant likewise.
By STROUT & HOLMES & J. J. PARLIN, *His Att'ys.*

Brief Statement.

And by way of brief statement under the statute in this behalf the said defendant says that she duly recovered judgment against the inhabitants of the town of Embden, after service of the writ in manner provided by law and upon an execution properly issued on said judgment against the inhabitants of the town of Embden, there being no corporate property of said inhabitants, the property of the said plaintiff, who was, at the time of the service of the original writ in suit on which said judgment was recovered, ever since has been, & still is, one of said inhabitants, was legally seized

and sold and the proceeds applied to pay said execution in manner authorized by law, and this is the grievance complained of by said Geo. L. Savage.

By STEWART & WARE, *Her Att'ys.*

A true copy of pleadings & brief statement.
Attest: L. H. WEBB,
Clerk Supreme Judicial Court.

Counter Brief Statement.

STATE OF MAINE, } ss:
Somerset, }

Sup. Jud. Court. March Term, A. D. 1884.

GEORGE L. EAMES *v.* SARAH J. SAVAGE.

And now comes the said plaintiff, and as to the defendant's plea of not guilty by her pleaded in this cause, whereby she puts herself on the country, the plaintiff doth the like; and as to the brief
8 statement filed by the defendant in this cause, the plaintiff, by way of counter brief statement, says that said judgment recovered against the inhabitants of the town of Embden, set forth in said brief statement, and the action in which it was recovered & the claim for which said action was brought were not, nor was either of them, against the individual inhabitants of said town of Embden; and the plaintiff denies the allegation that there was no corporate property of said town of Embden.

By STROUT & HOLMES & J. J. PARLIN,
His Attorneys.

A true copy of counter brief statement.
Attest: L. H. WEBB,
Clerk of the Supreme Judicial Court.

Stipulations. Filed Mar. T. S. J. C., 1884.

STATE OF MAINE, } ss:
Somerset, }

Supreme Judicial Court. March Term, A. D. 1884.

GEORGE L. EAMES
v.
SARAH J. SAVAGE. } No. 405.

It is hereby stipulated in this cause of record as follows:

First. Embden is a town duly created & existing under the laws of the State of Maine, in the county of Somerset, in said State, incorporated in 1804 and existing ever since.

Second. Sarah J. Savage, the defendant in this cause, recovered judgment against said town by the name of "The Inhabitants of the Town of Embden," as set forth in the declaration in this action.

Copies of the original writ, officer's return thereon, record, and docket entries in that action are made a part of this stipulation.

Third. No service of the writ or process in said action
9 of said Sarah J. Savage against The Inhabitants of the Town of Embden was made upon the plaintiff herein personally, unless the officer's return on the original writ therein shows such service.

Fourth. The plaintiff, George L. Eames, has been an inhabitant of said town of Embden ever since the fifteenth day of August, A. D. 1881.

Fifth. August 6th, 1883, the defendant herein sued out an *alias* execution on said judgment so recovered by her, and caused the same to be levied upon the property of the plaintiff, then found in said town of Embden, described in the declaration herein by N. F. Clapp, a deputy sheriff under Samuel A. Bickford, sheriff of said county of Somerset, and caused said property to be sold and the proceeds thereof applied as set forth in the declaration in this case and the return of said deputy sheriff on said execution, and the sum of three hundred and fifty-three dollars and seventy-nine cents to be paid to the defendant herein from said proceeds as the amount due upon said judgment. Copies of said execution and said return are made a part of this stipulation, the plaintiff herein being called George Eames in said return.

Sixth. No question is made but that the levy & return of the officer on said execution were regularly made, except by reason of the fact that the property of the plaintiff was taken to sat-
10 isfy said judgment against the inhabitants of *of* said town of Embden.

Seventh. All copies made a part of this stipulation are thereby made of record in this case.

Eighth. Upon the foregoing stipulation as to facts and on the pleadings in this cause, which are made a part of the case, the law court is to direct judgment according to law applicable thereto, and thereupon the damages, if any, are to be assessed at *nisi prius*.

Ninth. Writ and pleadings in this case and all copies referred to herein are to be copied and made a part of the case for the law court.

STROUT & HOLMES & J. J. PARLIN,
Att'ys for Plaintiff.
STEWART & WARE, *Att'ys for Defendant.*

Copy — Writ in Savage v. Embden.

STATE OF MAINE, } ss:
Somerset, }

To the sheriffs of our several counties, or either of their
[SEAL.] deputies, or of any constable of the town of ——, in the county of ——, Greeting:

We command you to summon the inhabitants of the town of Embden, in the county of Somerset (if they may be found in your

precinct), to appear before our justices of our supreme judicial court, next to be holden at Skowhegan, within & for the county of Somerset, on the third Tuesday of September, A. D. 1882, then and there in our said court to answer unto Sarah J. Savage, of Concord, in said county, married woman, in a plea of the case, for that the said defendants, to wit, at said Skowhegan, on the day of the purchase of this writ, being indebted to the said plaintiff in the sum
11 of two hundred ninety-three dollars and thirty cents, for so much money before that time had & received by the said defendants, to the plaintiff's use, then & there promised the said plaintiff, in consideration thereof, to pay her the same sum on demand.

The plaintiff claims to recover in this action the amount of twenty-three certain memoranda in writing called coupons, together with interest on each of them from the time of its maturity, and of which coupons, as also of the bonds or certificates of indebtedness to which they were once attached & from which they were cut, she, for a valuable consideration by her paid, became the holder & bearer, which said coupons were signed by O. H. McFadden, then and there treasurer of said defendant town, by their order and in their behalf, and were legally issued by said defendants, and are, one of them, of the following tenor, to wit:

" No. 10. $30.00.

Town of Embden Loan.

The town of Embden will pay to bearer thirty dollars, at the treasurer's (10) office, in Embden, on the first day of July, 1879.

O. H. McFADDEN, *Treasurer.*"

Three other of said coupons were cut from the same bond or certificate of indebtedness, and all precisely of the same tenor as the one just set forth, with these exceptions, to wit: In place of the figures " 1879 " said three coupons have successively " 1880," " 1881," and " 1882," & in place of the red figures " 10 " they have
12 successively the figures " 11," " 12," and " 13 " in red ink.

Another of said coupons is of the following tenor, to wit:

No. 19. $12.00.

Town of Embden Loan.

The town of Embden will pay to bearer twelve dollars, at the treasurer's (9) office, in Embden, on the first day of July, 1878.

O. H. McFADDEN, *Treasurer.*

Four other of said coupons were cut from the same bond or certificate of indebtedness as the coupon herein last above described, and are precisely of the same tenor as said coupon, with these exceptions, to wit: In place of the figures " 1878 " said four coupons have successively " 1879," " 1880," " 1881," and " 1882," and in place of the red figure " 9 " they have successively the figures or numbers " 10," " 11," " 12," and " 13 " in red ink.

Another of said coupons is of the following tenor, to wit:

No. 30. $6.00.

Town of Embden Loan.

The town of Embden will pay to bearer six dollars, at the treasurer's (9) office, in Embden, on the first day of July, 1878.

O. H. McFADDEN, *Treasurer.*

Four other of said coupons were cut from the same bond or certificate of indebtedness as the coupon hereinbefore last described and set forth, and are precisely of the same tenor as said coupon, with these exceptions, to wit: In place of the red number
13 "9" said four coupons have successively the figures or numbers "10," "11," "12," and "13" in red ink, and in place of the figures "1878" they have successively "1879," "1880," "1881," and "1882."

Another of said coupons is of the following tenor, to wit:

No. 34. $6.00.

Town of Embden Loan.

The town of Embden will pay to bearer six dollars, at the treasurer's (9) office, in Embden, on the first day of July, 1878.

O. H. McFADDEN, *Treasurer.*

Four other coupons were cut from the same bond or certificate of indebtedness as the coupon hereinbefore last set forth, and are precisely of the same tenor as said coupons, with these exceptions, to wit: In place of the red number "9" said four coupons have successively the figures or numbers "10," "11," "12," and 13 in red ink, and in place of the figures "1878" they have successively "1879," "1880," "1881," and "1882."

Another of said coupons is of the following tenor, to wit:

No. 35. $6.00.

Town of Embden Loan.

The town of Embden will pay to bearer six dollars, at the treasurer's (10) office, in Embden, on the first day of July, 1879.

O. H. McFADDEN, *Treasurer.*

Three other of said coupons were cut from the same bond or certificate of indebtedness as the coupon hereinbefore last set forth, & are precisely of the same tenor as said coupon, with these exceptions, to wit: In place of the red figures "10" said three coupons have successively the numbers "11," "12," & "13" in red ink, & in place of the figures "1879" they have successively "1880,"
14 "1881," and "1882."

Yet the said defendant-, although often requested, the same have not paid, but refuse, to the damage of the said plaintiff (as she

says) the sum five hundred and eighty-seven dollars, which shall then and there be made to appear with other due damages; and have you there this writ with your doings therein.

Witness John Appleton, Esquire, at Skowhegan, the twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-two.

L. H. WEBB, *Clerk.*

Officer's Return.

SOMERSET, *ss:*

AUGUST 5TH, A. D. 1882.

By virtue of the within writ I have summoned the inhabitants of the town of Embden within named, as within commanded, by delivering to Calvin F. Walker, town clerk of said town, a true and attested copy of this writ.

G. A. HUTCHINS,
Deputy Sheriff.

Fees:

Service	50
Travel, 14 miles	84
Copy	75
	$2 09

Entered Sept. Term, A. D. 1882. *Entries at Dec. Term, A. D.* 1882. *Record in Savage v. Embden.*

Docket entries:

Sarah J. Savage *v.* Inhabitants of Embden.
A. H. Ware; A. Simmons.
Sarah J. Savage *v.* Inhabitants of Embden.
A. H. Ware; A. Simmons.
1. Defaulted.
Damage, $324.23.
Costs, $12.75.
Execution issued January 5, 1883.

STATE OF MAINE, *Somerset,* } *ss:*

At the supreme judicial court, begun and held at Skowhegan, within and for the county of Somerset, on the third Tuesday of December, A. D. 1882, being the 19th day of said month.

15 Present: Hon. William G. Barrows, judge supreme judicial court.

SARAH J. SAVAGE, of Concord, in said County, Married Woman, Plaintiff,

vs.

THE INHABITANTS OF THE TOWN OF EMBDEN, in the County of Somerset, Defendants.

Plea of the case; declaration; count for money had and received. Writ dated July 12, 1882. Service August 5, 1882.

This action was commenced and entered at the September term of this court in this county, A. D. 1882, and judgment rendered at this term, December 30, 1882, for the plaintiff on default for three hundred twenty-four dollars and twenty-three cents damage and costs of suit, taxed at $12.75.

Ex'on issued January 5, 1883.

Attest: L. H. WEBB, *Clerk.*

Execution in Savage v. Embden.

STATE OF MAINE, *Somerset,* } ss:

[SEAL.] To the sheriffs of our several counties or either of their deputies, Greeting:

Whereas Sarah G. Savage, of Concord, in Somerset county, by the consideration of our justices of our supreme judicial court, holden at Skowhegan, within and for our county of Somerset aforesaid, on the third Tuesday of December, anno Domini 1882, recovered judgment against the inhabitants of the town of Embden, in Somerset county, for the sum of three hundred twenty-four dollars & twenty-three cents damage and twelve dollars & seventy-five cents costs of suit, as to us appears of record, whereof execution remains to be done, we command you, therefore, that of the goods & chattels of the inhabitants of said town of Embden, & of the real estate situated therein, whether owned by said town or not, within
16 your precinct you cause to be paid and satisfied unto said creditor at the value thereof in money the aforesaid sums, being three hundred thirty-six dollars and ninety-eight cents in the whole, with interest from the 30th day of December, 1882, being the time of the rendition of judgment, together with thirty cents for this and one former writ; and thereof also to satisfy yourself for your own fees. Hereof fail not, and make return of this writ, with your doings therein, into the clerk's office of our supreme judicial court, in our county of Somerset aforesaid, within three months from the date thereof.

Witness John Appleton, Esquire, at Skowhegan, the 6th day of August, in the year of our Lord one thousand eight hundred and eighty-three.

L. H. WEBB, *Clerk.*

Officer's Return on Execution, Savage v. Embden.

SOMERSET, *ss:*

OCTOBER 24TH, 1883.

By virtue of this execution, on the nineteenth day of October inst., I took as the property of George Eames, one of the residents and inhabitants of the town of Embden within named, five pairs of steers, and, having safely kept the same for the space of four days, and having on the 20th day of said October given public notice that the said steers would be sold at the stables of J. P. Paine, in Anson, in said county, on the twenty-fourth day of October, at ten o'clock in the forenoon, by posting up two notices of the said time and place of sale more than forty-eight hours before said time of the sale aforesaid, one at the post office at N. Anson and one at the post office at Anson, two public places in said Anson—

Pursuant to said notices, on the twenty-fourth day of said
17 October, at 10 o'clock a. m., at the stables of J. P. Paine, in said Anson, I sold said five pairs of steers by public auction to Henry B. Merry, he being the highest bidder therefor, for the sum of $385.00, according to annexed schedule, from which sum I have deducted the lawful charges for keeping & selling said five pairs of steers, being ($20.13) twenty dollars and thirteen cents, and from the residue thereof I applied the sum of three hundred and fifty-three dollars and seventy-nine cents in full satisfaction of this execution, & the balance of the proceeds of said sale, eleven dollars & eight cents, I tendered to the above-named George Eames, which sum he refused to accept. I therefore hold said sum for him.

N. F. CLAPP,
Deputy Sheriff.

Fees:

Levy, $353.79	$6 53
Keeping	10 00
Service	50
Travel, 10 miles	60
Making & posting notices of sale	1 00
Attending sale	1 50
	$20 13

Price Schedule of Property Sold.

1 pr. 5 years old or more	105 00
1 pr. 4 years old	95 00
1 pr. 3 years old	80 00
1 pr. 2 years old	52 00
1 pr. 2 years old	53 00
	$385 00

The six items or papers last above recorded are true copies of those papers referred to in the stipulations hereinbefore recorded, to wit, writ Sarah J. Savage *vs.* The Inhabitants of Embden, officer's return thereon, docket entries in said action, the record of the same, execution on the judgment, and the return of the officer thereon.

Attest: L. H. WEBB, *Clerk.*

This action was thereupon, to wit, upon the filing of the stipulations aforesaid, marked "law on agreed statements," and all
18 further proceedings in the court here were suspended to await the determination of the law court of the State of Maine.

This action was thence further continued from term to term of said supreme judicial court to the March term, A. D. 1885, when, on the fourth day of said term, the determination and decision of the law court was announced in the following certificate and rescript from said court, to wit:

Certificate from Law Court.

STATE OF MAINE:

Supreme Judicial Court.

CLERK'S OFFICE, AUGUSTA, *March* 20, 1885.

I hereby certify that I have received from the justices of said court an order to make upon the law docket of the supreme judicial court, holden for the middle district, on the fourth Tuesday of May, 1884, under the action George L. Eames *v.* Sarah J. Savage, transferred from the docket of said court, in the county of Somerset, as a case marked "law," the following entry, and to certify the same forthwith to the clerk of said court for the said county of Somerset, to wit, "judgment for defendant."

A. C. OTIS,
Dist. Clerk Mid. Dist.

To L. H. Webb, Esq., clerk of sup. jud. court for the county of Somerset.

Rescript.

Rescript as follows, to wit: R. S., chap. 84, sec. 30, authorizing executions upon judgments against towns, to be issued against and levied upon the goods and chattels of the inhabitants, is constitutional. The process provided in that section is "due process of law," and is not in conflict with XIVth amendment to the United States Constitution.

That was the process used by the defendants in these cases (this & Eames *v.* Bickford), and they are justified by it.

Judgment for the defendant in both cases.

A true copy.

Attest: A. C. OTIS, *Clerk.*

19 And now, in this term, to wit, March term, A. D. 1885, the defendant, Sarah J. Savage, appears and prays judgment. It is therefore considered by the court now here, on this third day of April, A. D. 1885, being the sixteenth day of said term, that the said plaintiff, George L. Eames, take nothing by his writ, and that the said defendant, Sarah J. Savage, recover judgment against the said plaintiff for her costs, taxed at thirty dollars and one cent ($30.01).

No execution has issued because of the writ of error from the United States Supreme Court and a supersedeas bond having been filed.

Recorded by—

L. H. WEBB, *Clerk.*

STATE OF MAINE, *Somerset,* } ss:

I, L. H. Webb, clerk of the supreme judicial court of the State of Maine for said county of Somerset, do hereby certify that the foregoing is a full, true, and perfect transcript of the record of the cause wherein George L. Eames is plaintiff and Sarah J. Savage is defendant (named in the writ of error hereto annexed) as the same appears of record in my office (volume 20, pp. 531 to 541, inclusive), which writ is, with said transcript and the citation granted upon said writ, with a true copy of the bond filed upon the granting of said citation, hereunto returned to the Supreme Court of the United States.

In witness whereof I have hereunto set my hand and the official seal of said court the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal Sup. Jud. Cur. Main., Gil., 1820.]

L. H. WEBB, *Clerk.*

STATE OF MAINE, *Somerset,* } ss:

I, John A. Peters, chief justice of the supreme judicial court of the State of Maine, hereby certify that L. H. Webb, Esquire, whose signature is above affixed, is clerk of the supreme judicial court of said State for the county of Somerset, and is by law the proper person to make out and certify copies of all records and proceedings of the supreme judical court holden within and for said county of Somerset, and that full faith and credit is and ought to be given to his acts and attestations done as aforesaid, and that his attestation is in due form of law.

In testimony whereof I have hereunto set my hand and the seal of said court this twenty-sixth day of August, anno Domini one thousand eight hundred and eighty-five, and in the one hundred and tenth year of the Independence of the United States of America.

[Seal Sup. Jud. Cur. Main., Gil., 1820.]

JOHN A. PETERS.

20 *Bond.*

Know all men by these presents that we, George L. Eames, of Embden, in the county of Somerset & State of Maine, as principal, and Stillman A. Walker, of Embden, & Micah W. Norton, of New Portland, as sureties, are held and firmly bound unto Sarah J. Savage, of Concord, in said county of Somerset and State of Maine, in the full and just sum of five hundred dollars, to be paid to the said Sarah J. Savage, her executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of April, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at a term of the supreme judicial court holden at Skowhegan, in and for the county of Somerset and State of Maine, on the third Tuesday of March, A. D. 1885, to wit, April 3, 1885, in a suit pending in said court between said George L. Eames, plaintiff, and said Sarah J. Savage, defendant, a judgment was rendered against the said George L. Eames and in favor of the said Sarah J. Savage, & for the sum of thirty dollars and one cent, costs of said suit, and the said George L. Eames having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation, directed to the said Sarah J. Savage, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said George L. Eames shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

21

GEO. L. EAMES. [SEAL.]
STILLMAN A. WALKER. [SEAL.]
MICAH W. NORTON. [SEAL.]

Sealed and delivered in presence of—
J. J. PARLIN.

Approved by—
ARTEMAS LIBBEY,
Presiding Judge of the Supreme Judicial Court of the State of Maine, Rendering said Judgment Complained of.

SOMERSET, *ss:*

Rec'd and filed 19th day Mar. term, S. J. court, A. D. 1885.
Attest: L. H. WEBB, *Clerk.*

STATE OF MAINE, } ss:
Somerset, }

The foregoing is a true copy of bond, with filing thereon.

Witness my hand & official seal the 26th day of August, A. D. 1885.

[Seal Sup. Jud. Cur. Main., Gil, 1820.]

L. H. WEBB,
Clerk S. J. Court.

22 *Writ in Error.*

UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the supreme judicial court of the State of Maine, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said court before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between George L. Eames, of Embden, in the county of Somerset and State of Maine, plaintiff, and Sarah J. Savage, of Concord, in said county and State, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein a title, right, privilege, or immunity was claimed under the Constitution or a treaty or statute of or commission held or authority exercised under the United States and the decision was against the title, right, privilege, or immunity specially set up or claimed under such Constitution, treaty, statute, commission, or authority, a manifest error hath happened, to the great damage of the said George L. Eames, plaintiff, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid,
23 with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this seventh day of April, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal of the Circuit Court, Maine.]

A. H. DAVIS,
Clerk of the Circuit Court of the United States for the District of Maine.

Allowed by—
ARTEMAS LIBBEY,
Presiding Judge of said Supreme Judicial Court of the State of Maine, Rendering said Judgment Complained of.

23½ [Endorsed:] George L. Eames, pl'ff in error, *v.* Sarah J. Savage. Writ of error. State of Maine, Somerset, *ss:* Rec'd & filed in the clerk's office S. J. court Apr. 22, A. D. 1885. Attest: L. H. Webb, clerk. Strout & Holmes, Portland, Me., counsel for plaintiff in error.

STATE OF MAINE, *Somerset,* } *ss:*

Supreme Judicial Court.

And now the judges of said supreme judicial — of the State of Maine make return of the writ wherein George L. Eames, of Embden, in the county of Somerset & State of Maine, is plaintiff in error, & Sarah J. Savage, of Concord, in said county of Somerset & State of Maine, is defendant in error, by annexing thereto and sending herewith, under the seal of said supreme judicial court of the State of Maine aforesaid, a true & attested transcript of the records in the suits therein mentioned, with all things concerning the same, including the bond given by said plaintiff in error upon suing out said writ of error to the Supreme Court of the United States, together with the citation issuing on said writ, the return of service thereon, and the assignment of errors made by said plaintiff in error and filed in said supreme judicial court of the State of Maine.

In witness whereof and of the truth of said transcript and of the identity of said citation, return, and assignment of errors I, L. H. Webb, clerk of said supreme judicial court within and for said county of Somerset, have hereunto set my hand and the seal of said court on this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal Sup. Jud. Cur. Main., Gil., 1820.]

L. H. WEBB, *Clerk.*

24 *Citation.*

The United States of America to Sarah J. Savage, of Concord, in the county of Somerset and State of Maine, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme judicial court of the State of Maine, at Skowhegan, in the county of Somerset and State of Maine, wherein George L. Eames, of Embden, in said county of Somerset and State of Maine, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error men-

tioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Artemas Libbey, presiding judge of the said supreme judicial court of the State of Maine, which court rendered the judgment complained of, this seventh day of April, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal Sup. Jud. Cur. Main., Gil., 1820.]

ARTEMAS LIBBEY,
Presiding Judge of said Supreme Judicial Court of the State of Maine, Rendering said Judgment.

STATE OF MAINE, }
Somerset, } *ss:*

CLERK'S OFFICE,
SUPREME JUDICIAL COURT, SKOWHEGAN.

In testimony that Artemas Libbey, whose name is subscribed to this citation, is the presiding judge of the supreme judicial court of the State of Maine, rendering the judgment therein named, and that full faith & credit is & ought to be given to his signature aforesaid, I make this certificate and hereunto set my name & affix the official seal of the court aforesaid this thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal Sup. Jud. Cur. Main., Gil., 1820.]

L. H. WEBB,
Clerk of all the Judicial Courts in the County Aforesaid.

STATE OF MAINE, }
Somerset, } *ss:*

I, John A. Peters, chief justice of the supreme judicial court of the State of Maine, hereby certify that L. H. Webb, Esquire, whose signature is above affixed, is clerk of the supreme judicial court of said State for the county of Somerset, and is by law the proper person to make out and certify copies of all records and proceedings of the supreme judicial court holden within and for said county of Somerset, and that full faith and credit is and ought to be given to his acts and attestations done as aforesaid, and that his attestation is in due form of law.

In testimony whereof I have hereunto set my hand and the seal of said court this thirteenth day of April, anno Domini one thousand eight hundred and eighty-five, and in the one hundred & ninth year of the Independence of the United States of America.

[Seal Sup. Jud. Cur. Main., Gil., 1820.]

JOHN A. PETERS.

25 [Endorsed:] Geo. L. Eames, in error, *v.* Sarah J. Savage. Citation. State of Maine, Somerset, *ss:* Rec'd & filed in the clerk's office, S. J. court, Aug. 26, 1885. Attest: L. H. Webb, clerk. Service by copy in hand Aug. 19. H. D. M., dep't. U. S. M. # 344.

On this — day of ——, in the year of our Lord one thousand eight hundred and eighty- —, personally appeared —— ——, before me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed — ——, A. D. 188—.

—— ——.

UNITED STATES OF AMERICA, *District of Maine*, } ss:

AUGUST 19, 1885.

Pursuant hereto I have this day cited and admonished the within-named Sarah J. Savage to appear as within directed by giving her in hand a true copy of this citation, with the certificate of the clerk and chief justice annexed thereto, said copy being attested by myself and by said clerk under the seal of said court.

H. D. MARBLE,
Dep't. U. S. Marshal.

Fees:

Service	$2 00
Travel, 122	7 32
	$9 32

26 *Assignment in Error.*

Supreme Court of the United States.

GEORGE L. EAMES, Plaintiff in Error,

v.

SARAH J. SAVAGE, Defendant in Error.

At the October term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said George L. Eames, by George F. Holmes, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

First. There is error in this, to wit, that it appears by the record aforesaid that the decision of the supreme judicial court of the State of Maine, to review which this writ of error is brought, held that the provisions of section thirty of chapter 84 of the Revised Statutes of the State of Maine authorizing an execution upon a judgment against towns to be issued against and levied upon the goods and chattels of the inhabitants is constitutional; whereas by the law of the land said section so authorizing executions is in violation of the Constitution of the United States and of the fourteenth amendment thereof.

Second. Also that there is error in this, in that it appears by the record aforesaid that the said court ruled that the process provided in said section thirtieth, hereinbefore named, is due process of law; whereas by the law of the land said process so provided is not due process of law, but is without the same.

Third. There is error also in this, to wit, that it appears by the record of said judgment that said supreme judicial court of the State of Maine ruled and held that the process provided in said section thirtieth is not in conflict with the fourteenth amendment to the Constitution of the United States; whereas by the law of the land
27 said process is in conflict with said fourteenth amendment, and by reason thereof said process is illegal and void.

Fourth. There is error also in this, in that, as appears by the record of said judgment, said supreme judicial court held that such process as is provided by said section thirtieth being used by the defendant in this cause, said defendant was justified thereby; whereas by the law of the land he was not justified thereby.

Fifth. There is also error in this, that by the record of the proceedings aforesaid it appears that the judgment aforesaid given was given for said Sarah J. Savage, defendant in error, against said George L. Eames, plaintiff in error; whereas by the law of the land said judgment ought to have been given for said George L. Eames, plaintiff in error, against said Sarah J. Savage, defendant in error.

And the said George L. Eames, plaintiff in error, prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by the occasion of said judgment.

GEO. J. HOLMES,
Att'y for Plaintiff in Error.

[Endorsed:] George L Eames, plaintiff in error, *v.* Sarah J. Savage, defendant in error. Assignment in error. State of Maine, Somerset, *ss.* Rec'd & filed in the clerk's office, S. J. court, Aug. 26, A. D. 1885. Attest: L. H. Webb, clerk.

28 STATE OF MAINE, PORTLAND, *February* 17, 1886.

I certify that the annexed is a true copy of the opinion of the supreme judicial court in the case of George L. Eames *vs.* Sarah S. Savage, by Emery, J., and concurred in by Peters, C. J., and Walton, Danforth, Libbey, and Foster, JJ. I further certify that the opinions of said court as law court are delivered to me by the court and kept in my possession by law.

J. W. SPAULDING,
Recorder of Decisions.

Copy, $—.

EMERY, *J.*:

The plaintiff was an inhabitant of the town of Embden at the time Sarah J. Savage began suit and recovered judgment against that town in this court. The execution upon that judgment was issued and was levied upon the plaintiff's goods, pursuant to R. S.

of 1871, c. 84, sec. 29, now R. S., c. 84, sec. 30, which expressly provides that executions against towns shall be issued against the goods and chattels of the inhabitants thereof, and shall be levied upon such goods and chattels. The plaintiff, however, claims that the statute is forbidden and made null by the last clause of sec. 6 of the Maine bill of rights, which declares that a person accused shall not "be deprived of his life, liberty, property, or privileges but by the judgment of his peers or by the law of the land," and also by that clause in sec. 1 of the fourteenth amendment to the Constitution of the United States, which declares that no State shall "deprive any person of life, liberty, or property without due process of law."

The presumption is the other way, in favor of the validity of the statute, and it is a presumption of great strength. All the judges and writers agree upon this. Chief Justice Marshall, in Fletcher *v.* Peck, 6 Cranch, 87, says that to overturn this presumption the judges must be convinced, and "the conviction must be clear
29 and strong." Judge Washington, in Ogden *v.* Saunders, 12 Wheat., 270, declared that if he rested his opinion on no other ground than a doubt that alone would be a satisfactory vindication of an opinion in favor of the constitutionality of a statute. Chief Justice Mellen, in Lunt's case, 6 Maine, 413, said: "The court will never pronounce a statute to be otherwise (than constitutional), unless in a case where the point is free from all doubt." This strong presumption is to be constantly borne in mind in considering the question here presented.

The statute itself, in this case, has existed for half a century since February 27, 1833, but it introduced no new principle or rule in the jurisprudence of this State. It merely affirmed a well-known custom or law that had long before existed. The practice of bringing suits against a political division or municipal organization and collecting the judgment from the individuals composing it is believed to have existed in England and to have been brought thence to New England. Actions against "the hundred" were known as far back as Edw. I. Stat. 13, Edw. I, c. 2, 3, Comyn's Dig. Hundred, c. 2. As "the hundred" had no property, except that of individuals, the judgments must have been collected from the individuals. In Russell *v.* Men of Devon, 2 T. R., 667, Lord Kenyon said that indictments against counties were sanctioned by the common law, though they would be levied on the men of the county. In Att'y Gen.
30 *v.* Exeter, 2 Russ., 45, the chancellor said: "If the fee farm was charged on the whole place called Exeter he who was entitled to the rent might have demanded it from any one who had a part of or in the city, leaving the person who was thus called on to obtain contributions from the other inhabitants as best he could." In New England the practice obtained from the earliest times without any statute. "About the year 1790 one Gatehill was imprisoned on an execution against the town of Marblehead for a debt the town owned." 5 Dane's Ab., c. 143, art. 5, secs. 10, 11, p. 158. Mr. Dane, as early as his abridgement, said the practice was justified "by immemorial usage." *Ibid.* Such an imprisonment so soon after the Revolution, when the principles of liberty were so freshly vindi-

cated, would never have been permitted had it not then been a familiar practice. The practice has been regarded as settled law in Massachusetts, and has been repeatedly alluded to in the opinions of the courts as sanctioned by immemorial usage. Riddle *v.* Proprietors on Merrimack River, 7 Mass., 187; Hawkes *v.* Kennebunk, 7 Mass., 463; Sch. Dist. in Rumford *v.* Wood, 13 Mass., 198; Brewer *v.* New Gloucester, 14 Mass., 216; Marcy *v.* Clark, 17 Mass., 330, 335; Merchants' Bank *v.* Cook, 4 Pick., 414; Chase *v.* Merrimack Bank, 19 Pick., 568; Gaskill *v.* Dudley, 6 Met., 546; Hill *v.* Boston, 122 Mass., 344.

The constitutionality of the law does not seem to have been really questioned till the case of Chase *v.* Bank, 19 Pick., 568, as late
31 as 1837, and its constitutionality was there said to be so well established as not to be an open question. The people of Maine, while a part of Massachusetts, were familiar with the law and the practice. The Maine courts have repeatedly recognized it as long established and as in harmony with the State constitution. Adams *v.* Wiscasset, 1 Maine, 361; Fernald *v.* Lewis, 6 Maine, 268; Baileyville *v.* Lowell, 20 Maine, 178–181; Spencer *v.* Brighton, 49 Maine, 326; Hayford *v.* Everett, 68 Maine, 507. Its constitutionality does not seem to have been questioned by the profession till Shurtleff *v.* Wiscasset, 74 Maine, 130. In Connecticut also the antiquity and constitutionality of the law have been repeatedly affirmed. Beers *v.* Botsford, 3 Day, 159; Beardsley *v.* Smith, 16 Conn., 368.

That a statute or rule of law or custom has so long existed unquestioned, and has been so often invoked and universally approved, and has become ingrained like this in the jurisprudence of a State, is a strong if not conclusive reason for pronouncing it constitutional and a part of the "law of the land." State *v.* Allen, 2 McCord, 56; Sears *v.* Cottrell, 5 Mich., 251.

The plaintiff urges that such a method of enforcing executions against towns arose out of the early theory that all the inhabitants were parties to the suit and could appear personally and be heard. It is claimed that when New England towns were first formed they did not have their present corporate character;
32 that they were an aggregation of individuals, generally owning a large amount of territory in common, and with common rights and common liabilities in respect thereto. These individuals would necessarily be parties in any suit affecting their common liabilities, and execution must have issued against them as individuals. In the progress of time such inhabitants were by statute made "bodies politic and corporate." (Mass. Laws of 1786.) Though they continued to be sued by the name of "The Inhabitants of the Town of ——," the individuals no longer appeared in court, but the defence was conducted by the town as a unit through its officers. The argument is that the town having been made a corporation and the individual inhabitant debarred from defending personally, he is entitled to his day in court, through some appropriate mesne process, before final process of execution can issue against his private property. It is claimed that a method of enforcing judgments against the inhabitants, which might not have been unjust when such inhabitants

were really parties, has become so, and therefore unconstitutional, since such inhabitants can defend only through a corporate organization. Towns, however, are not full corporations. They have no capital stock and no shares. They are only *quasi* corporations, created solely for political and municipal purposes, and given a *quasi* corporate character for convenience only. They remain still
33 an aggregation of individuals dwelling within certain territorial limits and under the direct jurisdiction of the Legislature.

But legislatures in creating purely private corporations have an unquestioned power to prescribe the personal liability of a stockholder therein for corporate debts and the method of enforcing it. They can limit this liability to the amount of his stock or to his proportionate share or can make him liable without limit. Morawetz on Corp., sec. 606, *et seq.*; Pollard, *v.* Bailey, 20 Wall., 520; Hathorn *v.* Calef, 2 Wall., 10. The common method of enforcement is by first recovering judgment against the corporation and then bringing some specified process against the stockholder; but under such proceedings against him the stockholder cannot question the judgment against the corporation except for fraud. He is bound by such judgment until reversed. Morawetz on Corp., sec. 619; Marsh *v.* Burroughs, 1 Woods, 470; Milliken *v.* Whitehouse, 49 Maine, 527.

The proceedings against the person alleged to be a stockholder are to establish the fact that he is a stockholder within the statute liability. In some instances the statutes have permitted a judgment creditor of a corporation to determine for himself, at his peril (of course indemnifying the officer), what persons are liable for the
34 debt and to levy the execution directly on the property of such person without any intermediate process. The question of liability as a stockholder would then be tried in a suit against the officer. This latter mode of enforcement, though perhaps harsher than the other, has been repeatedly held to be constitutional, and we do not know of any case holding otherwise. Morawetz on Corp., secs. 618, 619, and notes; Leland *v.* Marsh, 16 Mass., 391; Marcy *v.* Clark, 17 Mass., 330; Stedman *v.* Eveleth, 6 Met., 115, 124, and 125; Gray *v.* Coffin, 9 Cush., 205; Holyoke Bank *v.* Goodman Paper Co., 9 Cush., 576; see also Merrill *v.* Suffolk Bank, 31 Maine, 57; Came *v.* Brigham, 39 Maine, 35. In Penniman's case, 103 U. S., 714, the statute of Rhode Island authorized the arrest of a stockholder on an execution against the corporation. The constitutionality of the statute was directly affirmed by the State court and was assumed without question by the U. S. Supreme Court. The principle is analogous to that which permits a creditor holding an execution against A at his peril to levy directly on certain goods, as the goods of A, without first instituting any process to determine their ownership. If B's goods be taken he has a remedy against the officer or can successfully resist him. A is not injured in either event. If the person whose goods are sought to be taken on an execution against a corporation is liable as a stockholder for the debt he is not injured thereby. If he is not liable he has the same rights and remedies as B.

35 But the plaintiff urges that whatever may have been the adjudications heretofore upon this method of enforcing a judgment against a municipal or other corporation by levying upon the property of any member it is now forbidden by that clause of the fourteenth amendment to the United States Constitution, already quoted. He claims that "due process of law" as there used requires a notice to him personally and an opportunity for him to be heard in court before execution issues against his property. The general proposition would be that "due process of law" means judicial process with *judex, actor, and rens.* This proposition may seem to be supported by some general remarks of judges and writers, but no case in point is cited nor indeed any direct assertion.

The phrase "due process of law" in the United States Constitution and in the constitutions of many of the States and the phrase "law of the land" in the constitutions of others of the States, including Maine, have long had the same meaning. 2 Coke's Inst., 50, 51. English political history is full of the strife between the crown and the people, the crown seeking to enlarge its irresponsible prerogatives and the people insisting on fixed and certain laws. The Magna Charta and the various bills of rights in which these phrases were used were demanded from the kings as safeguards against arbitrary action, against partial or unequal decrees.

36 The barons and people insisted on general laws, *legum terrae*, on uniformity, "due process of law." They insisted on law, however harsh, as better security than the prerogative, however indulgent. These phrases did not mean merciful or even just laws, but they did mean equal and general laws, fixed and certain. The solicitude was to preserve the property of the subject from the inundation of prerogative. Broom's Court Law, 228. The English colonies in America were familiar with the conflict between customary law and arbitrary prerogative, and claimed the protection of those charters. When they came to form independent governments they sought to guard against arbitrary or unequal governmental action by inserting the same phrases in their constitutions.

They insisted that all proceedings against the individual or his property should be uniform and by general law. They put the same limitation upon the Federal Government in the fifth constitutional amendment. In commenting on these phrases Mr. Cooley cites with approval the language of Mr. Justice Johnson in Bank of Columbia *v.* Otely, 4 Wheat., 235: "As to the words from Magna Charta incorporated into the constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has settled down to this, that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." Cooley on Const. Lim., 355.

37 Judge Green, in Bank *v.* Cooper, 2 Yergar, 599 (24 Am. Dec., 523), said: "By 'law of the land' is meant a general and public law, operating equally on every individual in the community." He also said that such was the opinion of the distinguished

Judge Catron and of Lord Coke. Chief Justice Hemphill, in Janes *v.* Reynolds, 2 Texas, 251, said: "The terms 'law of the land' * * * are now in their most usual acceptation regarded as public laws, binding upon all the members of the community under all circumstances, and not partial or private laws." O'Neil, J., in State *v.* Simons, 2 Speers, 767, said: "The words mean the common law and the statute law existing in the State at the time of the adoption of the constitution."

But it has been expressly decided that due process of law does not always mean judicial process. The individual's property is often taken for taxes without his being first warned and heard, and it is nowhere contended now that such summary process is not due process of law. It is the fixed, certain process, applicable to all and not partial or unequal. McMillen *v.* Anderson, 95 U. S., 37. Mr. Justice Miller, in the opinion, said: "By summary is not meant arbitrary or unequal or illegal. It (the collection of the tax) must, under our Constitution, be lawfully done; but that does not
mean, nor does the phrase 'due process of law' mean, by a
38 judicial proceeding. In Murray *v.* Hoboken Land Company, 18 Howard, 272, a warrant of distress was issued by the Solicitor of the Treasury against the collector of New York, upon a certificate of the First Comptroller that the collector was indebted to the Treasury. The collector had not been notified nor heard, so far as appears. The statute authorizing such a process was held constitutional. Judge Curtis, on page 276, said: "The Constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it is due process." See also Davidson *v.* New Orleans, 96 U. S., 97; Walker *v.* Sauvinet, 92 U. S., 90.

It does not follow that every statute is the "law of the land" nor that every process authorized by a legislature is "due process of law." It must not offend against "the established principles of private rights and distributive justice." This statute does not. It does not transfer A's property to B. It only makes A's property liable for a debt he, in common with others, owes to B. A can save his property by paying the judgment against his town, which judgment binds him and all the other inhabitants and is a judgment he and each of the others ought to pay. Whether he
39 pay or let his property be sold he can recover full damages of the town and have the same final process for the collection of his debt. In the end he only pays his rateable share of the common debt. The statute is general and is uniform in its application to every town and every inhabitant. It may not be in theoretical harmony with other methods of procedure, but it accomplishes its laudable purpose of compelling towns to pay their debts without doing any injustice. Towns readily obtain credit at low rates of interest upon the strength of it, and to now pronounce it void would destroy their credit and work widespread disaster among those who have so confidently invested their savings in loans to towns.

The words "due process of law" in the fourteenth amendment do

not have any enlarged or different meaning from that heretofore ascribed to them. The amendment does not make Federal law and Federal process of law the "law of the land" and "due process of law" in each State. Whatever was due process of law in any State before the amendment is due process of law in that State since the amendment. Before the amendment the final determination of the question whether a State statute was according to the law of the land rested with the courts of the State. Since the amendment it rests with the Supreme Court of the United States. It is through this operation of the amendment that the citizen receives
40 additional protection against unequal and partial laws.

The United States Supreme Court in considering and determining such a question will look mainly to the fundamental law and general jurisprudence of the State. If the statute or process is found to be of ancient origin, to have been fully acquiesced in, to be general in its character and impartial in its application, and interwoven with the business of the people that Court will not pronounce against it because it is anomalous or has not been adopted elsewhere. The plaintiff cites Rees *v.* Watertown, 19 Wall., 107, and Meriwether *v.* Garrett, 102 U. S., 472, not as decisive or applicable authorities, but from some general observations in the opinions upon "due process of law." In neither case was there a comparison of a State statute with the fourteenth amendment, and in both cases (19 Wall., 122, and 102 U. S., 519) the New England method of enforcing judgments against municipalities is expressly noticed as an exception to the application of the general observations quoted by plaintiff and is not even incidentally condemned. Elsewhere in the opinions of the same court this method has been alluded to as actual, existing, and binding law, and nowhere has it even by implication been declared contrary to — New England law of the land or the fourteenth amendment. Riggs *v.* Johnson County, 6 Wall., 191; Supervisors *v.* Rogers, 7 Wall., 180; Barkley *v.* Levee Com'rs, 93
41 U. S., 295.

The statute in question must be held to be constitutional and unaffected by the fourteenth amendment.

Judgment for the defendant in each case.

41½ [Endorsed:] Sup. Court U. S. 1886, Oct'r term. No. 348. Geo. L. Eames, pl'ff in error, *vs.* Sarah J. Savage. Certified copy of opinion of sup. jud. court. Filed Sept. 4, 1886. Certified copy of the opinion of the supreme judicial court in George L. Eames *vs.* Sarah S. Savage.

42 Supreme Court of the United States. October Term, 1885.

GEORGE L. EAMES, Plaintiff in Error, *v.* SARAH J. SAVAGE.

It is agreed that the opinion of the supreme judicial court of the State of Maine, a copy of which has been certified by the official reporter of decisions of said court for said State and has been filed